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UNITED STATES DISTRICT COURT

FOR THE SOUTHERN DISTRICT OF CALIFORNIA

CARL SAPUTO JR., VALERIE
TORRES, and JOYCETTE GOODWIN
individually and on behalf of all others
similarly situated,

Plaintiffs,

v.

JOHNSON & JOHNSON CONSUMER
INC.,

Defendant.

Case No. 24-CV-1117 JLS (KSC)

**PLAINTIFFS' AMENDED CLASS
ACTION COMPLAINT**

JURY TRIAL DEMANDED

1 Plaintiffs Carl Saputo Jr., Valerie Torres, and Joycette Goodwin (together,
2 “Plaintiffs”) bring this Amended Class Action Complaint against Defendant Johnson
3 & Johnson Consumer Inc. (“Defendant”), individually and on behalf of all others
4 similarly situated, and complain and allege upon personal knowledge as to
5 themselves and their own acts and experiences and, as to all other matters, upon
6 information and belief, including investigation conducted by their attorneys:

7 **NATURE OF THE ACTION**

8
9 1. Plaintiffs bring this important consumer class action lawsuit on behalf
10 of similarly situated consumers (“Class Members”) who purchased for personal,
11 family, or household use, Defendant’s Band-Aid products, including Band-Aid
12 Flexible Fabric Bandages, Band-Aid OURTONE Flexible Fabric BR45 Bandages;
13 Band-Aid OURTONE Flexible Fabric BR55 Bandages; and Band-Aid OURTONE
14 Flexible Fabric BR65 Bandages (“Products”).

15 2. Defendant formulates, manufactures, markets, and sells the Products,
16 which it uniformly represents and advertises as, *inter alia*, being the “#1 Doctor
17 Recommended Brand” of bandages.”¹

18 3. Defendant fails to disclose to consumers that the Products contain per-
19 and polyfluoralkyl substances (“PFAS”).

20 4. PFAS are a group of synthetic, man-made, chemicals known to be
21 harmful to both humans and the environment. Because PFAS persist and accumulate
22 over time, they are harmful even at very low levels. Indeed, “PFAS have been shown
23 to have a number of toxicological effects in laboratory studies and have been
24 associated with thyroid disorders, immunotoxicity effects, and various cancers in
25 epidemiology studies.”²

26 ¹ <https://www.band-aid.com/products/adhesive-bandages/flexible-fabric-bandages>.

27 ² Nicholas J. Heckert, et al. “Characterization of Per- and Polyfluorinated Alkyl
28 Substances Present in Commercial Anti-fog Products and Their In Vitro
Adipogenic Activity,” *Environ. Sci. Technol.* 2022, 56, 1162-1173, 1162.

1 5. In fact, scientists are studying—and are extremely concerned about—
2 how PFAS affect human health. Consequently, the CDC outlined “a host of health
3 effects associated with PFAS exposure, including cancer, liver damage, decreased
4 fertility, and increased risk of asthma and thyroid disease.”³

5 6. Defendant knows the importance of marketing and labeling, including
6 the value of the label representations it carefully choose for placement on the
7 Products. Insofar as *PFAS* made its way into Defendant’s Products on purpose, it
8 should have been listed on the Product’s labeling. Insofar as it made its way into the
9 Products by accident, it follows that it was due to poor manufacturing processes by
10 either Defendant and/or its agents.

11 7. Defendant fails to mention the presence of PFAS in the Products on the
12 label, and further consistently and pervasively market the Products as the “#1 Doctor
13 Recommended [bandage] Brand,” thus implying the Products are safe and fit for
14 their intended use.

15 8. Indeed, the Products actually contain PFAS—a category of man-made
16 chemicals with a toxic, persistent, and bioaccumulative nature which are associated
17 with numerous health concerns.

18 9. As a result of Defendant’s misrepresentations and omissions, Plaintiffs
19 and putative Class Members have suffered injury in fact, including economic
20 damages.

21 10. Accordingly, Plaintiffs bring their claims against Defendant
22 individually and on behalf of a Class of all others similarly situated for (1) violation
23 of California’s Unfair Competition Law, Cal. Bus. & Prof. Code § 17200, *et seq.*
24 (“UCL”); (2) violation of California’s False Advertising Law, Cal. Bus. & Prof.
25 Code § 17500, *et seq.* (“FAL”); (3) breach of implied warranty under the Song-

26
27 ³ Harvard T.H. Chan Sch. Of Pub. Health, Health Risks of widely used chemicals
28 may be underestimated (June 27, 2018), <https://www.hsph.harvard.edu/news/hsph-in-the-news/pfas-healthrisks-underestimated/>.

1 Beverly Act, Cal. Civ. Code § 1700, *et seq.* and Cal. Com. Code § 2314; (4) breach
2 of express warranty; (5) negligent misrepresentation; and (6) unjust enrichment.

3 **PARTIES**

4 **A. Plaintiffs**

5 11. Plaintiff Saputo is a resident of Barstow, California, and was, at all
6 times relevant hereto, a citizen of California.

7 12. Plaintiff Torres is a resident of Los Angeles, California, and was, at all
8 times relevant hereto, a citizen of California.

9 13. Plaintiff Goodwin is a resident of Gardena, California, and was, at all
10 times relevant hereto, a citizen of California.

11 **B. Defendant**

12 14. Defendant is a Delaware corporation with its principal place of business
13 located in Skillman, New Jersey.

14 **JURISDICTION AND VENUE**

15 16. This Court has subject matter jurisdiction over this matter pursuant to
16 28 U.S.C. § 1332 of the Class Action Fairness Act of 2005 because: (1) there are
17 100 or more proposed Class Members, (ii) the aggregate amount in controversy
18 exceeds \$5,000,000.00, exclusive of interest and costs, and (iii) there is minimal
19 diversity because Plaintiffs and Defendant are citizens of different states.

20 17. This Court has personal jurisdiction over the Defendant because it
21 transacts business in this state and district, has substantial aggregate contacts with
22 this state and district, engaged in conduct that has and had a direct, substantial,
23 reasonably foreseeable, and intended effect of causing injury to persons in this state
24 and district, and because it purposefully availed themselves of the laws of the state
25 of California, and further, because Plaintiffs purchased the Products in this state and
26 district.

27 18. In accordance with 28 U.S.C. § 1391, venue is proper in this district
28

1 because a substantial part of the conduct giving rise to Plaintiffs' claims occurred in
 2 this district, including Plaintiffs' purchase of the Products, because Defendant
 3 transacts substantial business in this district, and because Defendant has
 4 intentionally availed themselves of the laws and markets within this district.

5 **FACTUAL ALLEGATIONS**

6 ***Defendant's Business***

7 19. Defendant is an American multinational, pharmaceutical, and medical
 8 technologies corporation.⁴ It was founded in 1886 and is now one of the world's
 9 most valuable companies.⁵

10 20. Defendant has manufactured, marketed, and sold the Products
 11 throughout the county, including in California, for over 100 years.

12 21. According to Band-Aid's website,

13 Our products have been used by millions—even billions—of people for
 14 more than a century, giving BAND-AID® Brand an iconic place in
 15 American culture. We reached that place through a history of
 innovation, healing, and caring for our customers.⁶

16 24. Indeed, American consumers have grown to know and trust Band-Aid
 17 based on marketing campaigns such as “[t]he catchy commercial jingle, ‘I am stuck
 18 on BAND-AID® Brand cuz BAND-AID’s stuck on me,’” and representations by
 19 Defendant in commercials and on packaging that the Products are the “#1 Doctor
 20 Recommended Brand.”

21 25. Defendant sells its products, including the Products that are the subject
 22 of this litigation, at mass market retailers, grocery stores, and drugstores throughout
 23 the United States, including California.

24 ***PFAS Chemicals and Associated Risks***

25
 26
 27 ⁴ https://en.wikipedia.org/wiki/Johnson_%26_Johnson.

28 ⁵ *Id.*

⁶ <https://www.band-aid.com/our-brand/brand-history>.

1 26. PFAS are a category of highly persistent and potentially harmful man-
2 made chemicals.⁷

3 27. PFAS are not naturally occurring.⁸ They were first developed by
4 scientists in the 1940s.⁹

5 28. The man-made PFAS chemicals, which are in the Products, are
6 sometimes called “forever chemicals” because they bioaccumulate, or build up in
7 the body over time.

8 29. PFAS chemicals have been associated with a variety of negative health
9 effects for humans and the environment.

10 30. The EPA has identified that “[c]urrent peer-reviewed scientific studies
11 have shown that exposure to certain levels of PFAS may lead to:”¹⁰

- 12 a. Reproductive effects such as decreased fertility or increased high
13 blood pressure in pregnant women.
- 14 b. Developmental effects or delays in children, including low birth
15 weight, accelerated puberty, bone variations, or behavioral
16 changes.
- 17 c. Increased risk of some cancers, including prostate, kidney, and
18 testicular cancers.
- 19 d. Reduced ability of the body’s immune system to fight infections,
20 including reduced vaccine response.
- 21 e. Interference with the body’s natural hormones.
- 22 f. Increased cholesterol levels and/or risk of obesity.

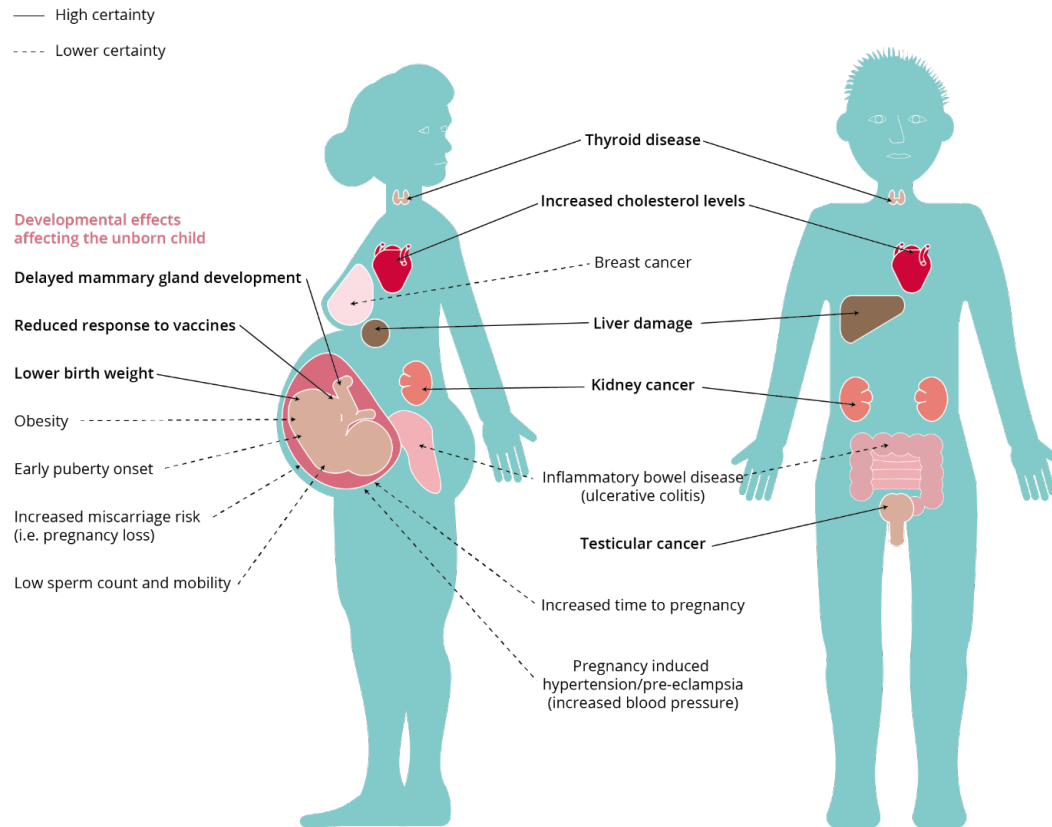
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26 ⁷ *PFAS Explained*, EPA, <https://www.epa.gov/pfas/pfas-explained>.

27 ⁸ <https://www.atsdr.cdc.gov/pfas/resources/pfas-faqs.html>.

28 ⁹ https://www.3m.com/3M/en_US/pfas-stewardship-us/pfas-history/.

¹⁰ <https://www.epa.gov/pfas/our-current-understanding-human-health-and-environmental-risks-pfas>.

31. A figure from the European Environmental Agency (“EEA”) shows the “[e]ffects of PFAS on human health.”¹¹



32. The EEA article further explained that “[p]eople most at risk of adverse health impacts are those exposed to high levels of PFAS, and vulnerable population groups such as children and the elderly.”¹²

33. The danger of PFAS chemicals is well known. On September 20, 2020, a *New York Times* article titled, “These Everyday Toxins May Be Hurting Pregnant Women and Their Babies”, reported on the dangers of PFAS—particularly during gestation and in early childhood development:¹³

¹¹ *Emerging chemical risks in Europe — ‘PFAS’*, EUROPEAN ENVIRONMENT AGENCY (Dec. 12, 2019, last modified Mar. 9, 2021) <https://www.eea.europa.eu/publications/emerging-chemical-risks-in-europe>.

¹² *Id.*

¹³ Liza Gross, *These Everyday Toxins may be Hurting Pregnant Women and Their Babies*, NEW YORK TIMES (Sept. 23, 2020, updated Oct. 18, 2021).

1 34. As a result, the state of California has enacted laws that prohibit or
2 require notification for the commercial distribution of products containing PFAS.

3 35. Scientists think these widely used industrial chemicals may harm
4 pregnant women and their developing babies by meddling with gene regulators and
5 hormones that control two of the body's most critical functions: metabolism and
6 immunity.¹⁴

7 36. According to the Environmental Protection Agency ("EPA"), limiting
8 exposure to PFAS can help protect individual health. "Because certain PFAS are
9 known to cause risks to human health, the most important steps you and your family
10 can take to protect your health is to understand how to limit your exposure to PFAS
11 by taking [steps to] reduce possible exposure during daily activities."¹⁵

12 37. There is no treatment to remove PFAS from the body. Because PFAS
13 accumulates in body tissues over time, the most obvious way to avoid exposure is
14 for consumers to avoid products which they know contain PFAS.¹⁶

15 38. Defendant is well aware of consumers' desire to avoid potentially
16 harmful chemicals, which is exactly why it has engaged in an aggressive, uniform
17 marketing campaign intended to convince consumers that the Products are safe by
18 representing they provide trusted protection for healing wounds and are
19 recommended by doctors across the country.

20 39. Reasonable consumers purchasing the Products would believe, based
21 on Defendant's representations, that the Products are safe to use and do not contain
22 chemicals that could adversely impact their health.

23
24 <https://www.nytimes.com/2020/09/23/parenting/pregnancy/pfas-toxins-chemicals.html>.

25 ¹⁴ <https://www.nytimes.com/2020/09/23/parenting/pregnancy/pfas-toxins-chemicals.html>

26 ¹⁵ <https://www.epa.gov/pfas/meaningful-and-achievable-steps-you-can-take-reduce-your-risk>.

27 ¹⁶ <https://www.healthline.com/health-news/how-to-reduce-your-exposure-to-pfas-the-hidden-toxic-forever-chemicals#How-to-limit-PFAS-exposure>.

1 ***Discovery of PFAS in the Products***

2 40. “Mamavation is a green parenting community, website, and blogger
3 network” that provides guidance on non-toxic products, health research, organic
4 food, and clean indoor air quality.¹⁷ It uses EPA-certified labs to identify chemicals,
5 and then translates the science behind the findings using a scientific and medical
6 advisory team.¹⁸ Mamavation’s consumer studies are funded by affiliate proceeds
7 and sales from the site.¹⁹

8 41. On or about April 2, 2024, Mamavision published a “ ‘Band-Aids’ &
9 Bandages with Indications of PFAS ‘Forever Chemicals’ Report” (“Band-Aid PFAS
10 Report”).²⁰

11 42. According to the Band-Aid PFAS Report, Mamavation sent 40
12 bandages from 18 brands, including the Products, to an EPA-certified laboratory
13 looking for indications of PFAS.²¹

14 43. Mamavation’s EPA-certified laboratory used marker testing to identify
15 the potential presence of PFAS “forever chemicals” in bandages.²²

16 44. Organic fluorine is a marker for PFAS because all PFAS chemicals are
17 carbon-based compounds that contain fluorine. The specific lab method used to test
18 for total fluorine was the “Determination of Total Fluorine by Oxygen Flask
19 Combustion and Ion-Selective Electrode.” If total fluorine was observed at a
20 detection level of 10 ppm or greater, the lab did the “Determination of free Fluoride
21 Ion in the product by Ion-Selective Electrode” and then subtracted that from the

22 ¹⁷ [https://www.mamavation.com/about-](https://www.mamavation.com/about-network#:~:text=Mamavation%20is%20a%20green%20parenting,brand%20introductions%20and%20product%20recommendations;see%20alsohttps://www.mamavation.com/)
23 [network#:~:text=Mamavation%20is%20a%20green%20parenting,brand%20introductions%20and%20product%20recommendations; see also](https://www.mamavation.com/about-network#:~:text=Mamavation%20is%20a%20green%20parenting,brand%20introductions%20and%20product%20recommendations;see%20alsohttps://www.mamavation.com/)
24 <https://www.mamavation.com/>.

25 ¹⁸ [https://www.mamavation.com/product-](https://www.mamavation.com/product-investigations#:~:text=We%20use%20several%20EPA%2DCertified,and%20from%20Environmental%20Health%20News.)
26 [investigations#:~:text=We%20use%20several%20EPA%2DCertified,and%20from](https://www.mamavation.com/product-investigations#:~:text=We%20use%20several%20EPA%2DCertified,and%20from%20Environmental%20Health%20News.)
27 [%20Environmental%20Health%20News.](https://www.mamavation.com/product-investigations#:~:text=We%20use%20several%20EPA%2DCertified,and%20from%20Environmental%20Health%20News.)

28 ¹⁹ *Id.*

²⁰ [https://www.mamavation.com/health/band-aids-bandages-pfas-forever-](https://www.mamavation.com/health/band-aids-bandages-pfas-forever-chemicals-report.html)
chemicals-report.html.

²¹ *Id.*

²² *Id.*

1 Total Fluorine to determine the amount of organic fluorine. This marker testing is
 2 likely to show the presence of PFAS. Organic fluorine can also capture other
 3 fluoropolymers, pharmaceuticals, and common hydrofluorocarbon refrigerants, such
 4 as 1,1,1,2-tetrafluoroethane (commonly known as R-134a) and 2,3,3,3-
 5 tetrafluoropropene (commonly known as HFO-1234yf), which are all also PFAS.²³

6 45. Scott Belcher, Ph.D. & Associate Professor with the Center for
 7 Environmental & Health Effects of PFAS at North Carolina State University says
 8 “fluoropolymers, such as polytetrafluoroethylene (PTFE), are extremely common
 9 forms of PFAS that could be contributing to the organic fluorine found in bandages.
 10 Methods used for detecting individual PFAS, such as PFOA or GenX, cannot
 11 directly identify PTFE. However, the analysis of total organic fluorine (TOF) does
 12 account for all PFAS contaminants in bandages, including PTFE. Therefore, this
 13 method of testing serves as a good ‘spot-check’ of consumer products.”²⁴

14 46. The Band-Aid PFAS Report states that Mamavation’s laboratory
 15 detected organic fluorine above 100 ppm in the absorbent pad or the adhesive flaps
 16 of the Products. Specifically, it found:

- 17 a. Band-Aid Flexible Fabric Comfortable Protection Bandages²⁵ — 188
- 18 ppm organic fluorine on the absorbent pad;
- 19 b. Band-Aid OURTONE Flexible Fabric BR45 Bandages — 262 ppm
- 20 organic fluorine on the absorbent pad;
- 21 c. Band-Aid OURTONE Flexible Fabric BR55 Bandages — 250 ppm
- 22 organic fluorine on the absorbent pad; and

23 ²³ *Id.*

24 ²⁴ *Id.*

25 ²⁵ Mamavation tested an older sample that was likely 7-8 years old and not
 26 available in stores anymore. *Id.*

d. Band-Aid OURTONE Flexible Fabric BR65 Bandages — 260 ppm organic fluorine on the absorbent pads and 374 ppm on the sticky flaps.

A second product tested had 169 ppm on the absorbent pad.²⁶

47. Linda Birnbaum, Scientist Emeritus and Former Director of the National Institute of Environmental Health Sciences and National Toxicology Program & Scholar in Residence at Duke University, and Adjunct Professor at both University of North Carolina, & Yale University had this to say: “Because bandages are placed upon open wounds, it’s troubling to learn that they may be also exposing children and adults to PFAS. It’s obvious from the data that PFAS are not needed for wound care, so it’s important that the industry remove their presence to protect the public from PFAS and opt instead for PFAS-free materials.”²⁷

48. In addition to the Band-Aid PFAS Report commissioned by Mamavation, Plaintiffs sought independent third-party testing to determine whether the Products contain PFAS chemicals.

49. Plaintiffs’ independent testing was conducted in accordance with accepted industry standards for detecting the presence of PFAS.

50. Plaintiffs’ testing detected material levels of PFAS in the Products, including significant levels of 3-(4-fluorophenyl)-3-methyl-3-propanoic acid (“FPePA”), Perfluorononanoic acid (“FHpPA”), Perfluoro-n-nonanoic acid (“PFNA”), Perfluoro-n-undecanoic acid (“PFUdA”), and Perfluoro-n-decanoic acid (“PFDA”).

Defendant’s False and Deceptive Claims

51. The Products are bandages that are uniformly represented as the #1 doctor recommended brand.²⁸

²⁶ *Id.*

²⁷ *Id.*

²⁸ See, e.g., <https://www.band-aid.com/products/adhesive-bandages/ourtone-adhesive-bandages>.

52. Defendant also represents the Flexible Fabric Products “can help protect against dirt and germs that may cause infection” and provide “[t]rusted protection for healing your wounds.” The packaging also portrays a heart with a bandage (presumably, a Band-Aid brand Product) on it:



53. The Products do not disclose the presence of PFAS—or any other synthetic chemical—in their ingredients.

54. It is undeniable that the Products are uniformly represented across all marketing channels, including the Product’s packaging.

Defendant’s Unlawful Conduct

55. At all times relevant to this action, Defendant knew, or at minimum should have known, that its Products contain PFAS.

56. To capitalize on increasing consumer demand for products free from toxic ingredients like PFAS, Defendant has knowingly and willfully deployed a concerted strategy to distinguish its Products from competing options on the market by representing the Products as the “#1 Doctor Recommended [bandage] Brand” that provides “[t]rustworthy protection for [consumers’] healing wounds.”

57. Throughout the class period, Defendant has targeted health-conscious consumers by falsely and misleadingly representing the Products as trusted and safe for consumers’ health and well-being. Consequently, reasonable consumers believe the Products are free of chemicals known to harm human health.

58. Defendant is well-aware that consumers are increasingly demanding products that support their health and well-being.

59. At the same time, awareness of, and an inclination toward, safer products is guiding consumer choices. One survey, for instance, found that “when asked to choose the top three factors they prioritize when deciding between products, the majority of consumers surveyed said they prioritize the health/safety of products (71%) and products free of certain toxic chemicals (70%).”²⁹

60. These findings extend to the packaging of products, with 82% of consumers agreeing that “it is important for brands to balance safety and concern for

²⁹ Made Safe, “What Shoppers Want: Safe & Healthy Products,” <https://www.madesafe.org/wpcontent/uploads/2017/07/What-Shoppers-Want.pdf>.

1 the environment when designing product packaging.”³⁰

2 61. Additionally, “[t]he majority of shoppers . . . are willing to spend more
3 for a product they know is safer, with 42% willing to spend 5-15% more, 36%
4 willing to spend 16-25% more, and 17% willing to spend 1-5% more.”³¹

5 62. Therefore, current research demonstrates, and Defendant’s marketing
6 strategy supports, that the presence of harmful chemicals in products is material to
7 reasonable consumers.

8 63. Defendant’s strategy to stay aligned with consumer preferences in
9 order to retain a competitive advantage in the marketplace, which includes
10 representing to Products that do not contain harmful ingredients, would inevitably
11 be negatively impacted if it disclosed the presence of PFAS in its Products.

12 64. Defendant had exclusive knowledge of the contents and ingredients of
13 its Products, including whether they contained PFAS.

14 65. Defendant also had exclusive knowledge of its ingredient suppliers,
15 from whom Defendant could have obtained information about the contents and
16 ingredients of the Production, including whether they contained PFAS.

17 66. Defendant also knew the presence of PFAS posed a concern with regard
18 to the safety of the Products.

19 67. Despite this knowledge, Defendant failed to disclose the presence of
20 PFAS in the Products. Such an omission was material to consumers.

21 68. Consumers lack the expertise to ascertain the true ingredients in the
22 Products prior to purchase. Accordingly, reasonable consumers must, and do rely
23 on Defendant to accurately and honestly advertise its Products’ ingredients and not
24 contradict those representations by using chemicals in its Products that are known
25 to pose a risk to human health. Such misrepresentations are material to reasonable

26 ³⁰ Gray, “New Consumer Packaging Trends Are Changing the Game for Food &
27 Beverage Processors,” <https://www.gray.com/insights/new-consumer-packaging-trends-are-changing-the-game-for-food-beverage-processors/>.

28 ³¹ Made Safe, “What Shoppers Want,” at 3.

1 consumers' purchasing decisions.

2 69. Defendant's representations that the Products provide "trusted
3 protection for [consumers'] healing wounds" and failure to disclose the presence of
4 PFAS in the Products' as described herein are false and misleading because the
5 Products actually contain toxic ingredients like PFAS.

6 70. Defendant's representations are likely to mislead reasonable
7 consumers, and indeed did mislead Plaintiffs and Class members, regarding the
8 presence of PFAS chemicals in its Products. Accordingly, these acts and practices
9 by Defendant are deceptive.

10 71. Consumers reasonably relied on Defendant's false statements and
11 misleading representations, and reasonably expected that Defendant's Products
12 would conform with its representations and, as such, would not contain harmful
13 PFAS chemicals.

14 72. Defendant's false statements, misleading representations and material
15 omissions are intentional, or otherwise entirely careless, and render its Products
16 worthless or less valuable.

17 73. If Defendant had disclosed to Plaintiffs and putative Class Members
18 that its Products contained PFAS chemicals, Plaintiffs and putative Class Members
19 would not have purchased Defendant's Products or they would have paid less for
20 them.

21 74. Plaintiffs and Class Members were among the intended recipients of
22 Defendant's deceptive representations and omissions described herein.

23 75. Defendant's representations and omissions, as described herein, are
24 material in that a reasonable person would attach importance to such information
25 and would be induced to act upon such information in making purchase decisions.

26 76. The materiality of the representations described herein also establishes
27 causation between Defendant's conduct and the injuries Plaintiffs and the Class
28

1 Members sustained.

2 77. Defendant is aware that consumers are concerned about the use of
3 PFAS in its products, yet it has continued to market and advertise its Products as
4 safe and trusted for consumers' health and well-being, focused representations in
5 order to profit off of unsuspecting consumers, including Plaintiffs and Class
6 Members.

7 78. The presence of PFAS chemicals in Defendant's Products are entirely
8 inconsistent with its uniform representations.

9 79. PFAS are present in Defendant's Products in a quantity which any
10 reasonable person would consider to be significant.

11 80. Defendant's knowingly false and misleading representations have the
12 intended result of convincing reasonable consumers that their Products are safe for
13 their intended use of protecting healing wounds and therefore do not contain toxic
14 ingredients like PFAS. No reasonable consumer would consider Defendant's
15 Products as doctor recommended (and, thus, safe) and "[t]rusted protection for
16 [consumers'] healing wounds" if they knew that the Products contained harmful
17 PFAS chemicals.

18 81. Defendant's false, misleading, and deceptive representations, as
19 described herein, are likely to continue to deceive and mislead reasonable
20 consumers and the general public. Indeed, it has already deceived and misled
21 Plaintiffs and Class Members.

22 82. In making the false, misleading, and deceptive representations,
23 Defendant knew and intended consumers would pay a premium for the Products
24 over comparable products that contain PFAS.

25 83. Plaintiffs and Class Members paid money and paid a premium for the
26 Products over comparable products that are made from or contain PFAS, expecting
27 the same or better quality than the comparable products. Due to Defendant's
28

1 misrepresentations, Plaintiffs did not obtain the full value of the Products.

2 84. Plaintiffs and Class Members purchased, purchased more of, or paid
3 more for, the Products than they would have had they known the truth about the
4 Products' harmful ingredients, i.e., that they contain PFAS. Thus, Plaintiffs and
5 Class Members have suffered injury in fact and lost money or property as a result
6 of Defendant's wrongful conduct.

7 85. Defendant's widespread marketing campaign portraying the Products
8 as safe and trusted as detailed herein, is misleading and deceptive to consumers
9 because the Products are made with toxic ingredients. Plaintiffs bring this action
10 on behalf of the proposed Classes to stop Defendant's misleading practices.

11 **PLAINTIFFS' FACTUAL ALLEGATIONS**

12 ***Plaintiff Saputo***

13 86. During the applicable statute of limitations period, including in or
14 around April of 2023, Plaintiff Saputo purchased the Band-Aid Flexible Fabric
15 Bandages from a Walmart located in Victorville, California. Plaintiff paid
16 approximately \$3 for the Product. Plaintiff Saputo purchased the Band-Aid Flexible
17 Fabric Bandage Product multiple times prior to April of 2023.

18 87. Prior to purchase, Plaintiff Saputo read the Products' packaging and
19 advertising, including the representations that they are the "#1 Doctor
20 Recommended Brand" and provide "[t]rusted protection for your healing wounds."

21 88. Plaintiff Saputo believed he was purchasing Products that were safe for
22 use and free of harmful chemicals like PFAS, due not only to Defendant's
23 representations, but also Defendant's failure to mention the presence of PFAS on the
24 packaging. Plaintiff Saputo reasonably relied on these representations and warranties
25 in deciding to purchase the Products, and these representations were part of the basis
26 of the bargain in that he would not have purchased the Products, or would have paid
27 less for them, if the true facts had been known.

1 89. As a direct result of Defendant's material misrepresentations and
2 omissions, Plaintiff Saputo suffered and continues to suffer, economic injuries.

3 90. Plaintiff Saputo continues to desire to purchase the Products from
4 Defendant if he can rely on the Products to be safe and free from any toxic
5 ingredients, including those known to pose a risk to human health. However,
6 concerned about the health consequences of PFAS and Defendant's
7 misrepresentations detailed herein, Plaintiff Saputo is unable to determine if
8 Defendant's Products are actually free of harmful chemicals like PFAS in the future.
9 Plaintiff Saputo understands that the composition of the Products may change over
10 time, but as long as Defendant may freely advertise the Products as safe when they
11 actually contain material levels of PFAS, when presented with false or misleading
12 information when shopping, he will be unable to make informed decisions about
13 whether to purchase Defendant's Products and will be unable to evaluate the
14 different prices between Defendant's Products and competitor's products, which *are*
15 in fact free of PFAS.

16 91. Plaintiff Saputo also seeks to include an injunction to require the
17 implementation and funding of a blood serum testing program for Plaintiff Saputo
18 and Class Members to test for the presence of PFAS in their blood serum; and the
19 implementation and funding of a medical monitoring program for Plaintiff Saputo
20 and Class Members sufficient to monitor their health to ensure they are adequately
21 monitored for the harmful effects of PFAS in the human body.

22 ***Plaintiff Torres***

23 93. During the applicable statute of limitations period, including in or
24 around February of 2024, Plaintiff Torres purchased Band-Aid OURTONE Flexible
25 Fabric BR45 Bandages; Band-Aid OURTONE Flexible Fabric BR55 Bandages; and
26 Band-Aid OURTONE Flexible Fabric BR65 Bandages from CVS near her home in
27
28

1 Los Angeles, California. Plaintiff Torres paid approximately \$5 for each of the
2 Products at the time of her purchase.

3 94. Prior to purchase, Plaintiff Torres read the Products' packaging and
4 advertising, including the representations that they are the "#1 Doctor
5 Recommended Brand" and provide "[t]rust protection for your healing wounds."

6 95. Plaintiff Torres believed she was purchasing Products that were safe for
7 use and free of harmful chemicals like PFAS, due not only to Defendant's
8 representations, but also Defendant's failure to mention the presence of PFAS on the
9 packaging. Plaintiff Torres reasonably relied on these representations and warranties
10 in deciding to purchase the Products, and these representations were part of the basis
11 of the bargain in that she would not have purchased the Products, or would have paid
12 less for them, if the true facts had been known.

13 96. As a direct result of Defendant's material misrepresentations and
14 omissions, Plaintiff Torres suffered and continues to suffer, economic injuries.

15 97. Plaintiff Torres continues to desire to purchase the Products from
16 Defendant if she can rely on the Products to be safe and free from any toxic
17 ingredients, including those known to pose a risk to human health. However,
18 concerned about the health consequences of PFAS and Defendant's
19 misrepresentations detailed herein, Plaintiff Torres is unable to determine if
20 Defendant's Products are actually free of harmful chemicals like PFAS in the future.
21 Plaintiff Torres understands that the composition of the Products may change over
22 time, but as long as Defendant may freely advertise the Products as safe when they
23 actually contain material levels of PFAS, when presented with false or misleading
24 information when shopping, she will be unable to make informed decisions about
25 whether to purchase Defendant's Products and will be unable to evaluate the
26 different prices between Defendant's Products and competitor's products, which *are*
27 in fact free of PFAS.

1 98. Plaintiff Torres also seeks to include an injunction to require the
2 implementation and funding of a blood serum testing program for Plaintiff Torres
3 and Class Members to test for the presence of PFAS in their blood serum; and the
4 implementation and funding of a medical monitoring program for Plaintiff Torres
5 and Class Members sufficient to monitor their health to ensure they are adequately
6 monitored for the harmful effects of PFAS in the human body.

7 ***Plaintiff Goodwin***

8 101. During the applicable statute of limitations period, including in or
9 around January of 2024, Plaintiff Goodwin purchased the Band-Aid OURTONE
10 Flexible Fabric BR55 Bandages and Band-Aid OURTONE Flexible Fabric BR65
11 Bandages from Target near her home in Gardena, California. Plaintiff Goodwin paid
12 approximately \$5 for each of the Products at the time of her purchase.

13 102. Prior to purchase, Plaintiff Goodwin read the Products' packaging and
14 advertising, including the representations that they are the "#1 Doctor
15 Recommended Brand" and provide "[t]rust protection for your healing wounds."

16 103. Plaintiff Goodwin believed she was purchasing Products that were safe
17 for use and free of harmful chemicals like PFAS, due not only to Defendant's
18 representations, but also Defendant's failure to mention the presence of PFAS on the
19 packaging. Plaintiff Goodwin reasonably relied on these representations and
20 warranties in deciding to purchase the Products, and these representations were part
21 of the basis of the bargain in that she would not have purchased the Products, or
22 would have paid less for them, if the true facts had been known.

23 104. As a direct result of Defendant's material misrepresentations and
24 omissions, Plaintiff Goodwin suffered and continues to suffer, economic injuries.

25 105. Plaintiff Goodwin continues to desire to purchase the Products from
26 Defendant if she can rely on the Products to be safe and free from any toxic
27 ingredients, including those known to pose a risk to human health. However,
28

1 concerned about the health consequences of PFAS and Defendant's
2 misrepresentations detailed herein, Plaintiff Goodwin is unable to determine if
3 Defendant's Products are actually free of harmful chemicals like PFAS in the future.
4 Plaintiff Goodwin understands that the composition of the Products may change over
5 time, but as long as Defendant may freely advertise the Products as safe when they
6 actually contain material levels of PFAS, when presented with false or misleading
7 information when shopping, she will be unable to make informed decisions about
8 whether to purchase Defendant's Products and will be unable to evaluate the
9 different prices between Defendant's Products and competitor's products, which *are*
10 in fact free of PFAS.

11 106. Plaintiff Goodwin also seeks to include an injunction to require the
12 implementation and funding of a blood serum testing program for Plaintiff Goodwin
13 and Class Members to test for the presence of PFAS in their blood serum; and the
14 implementation and funding of a medical monitoring program for Plaintiff Goodwin
15 and Class Members sufficient to monitor their health to ensure they are adequately
16 monitored for the harmful effects of PFAS in the human body.

17 **INJURY TO THE PUBLIC AT-LARGE AND POTENTIAL**
18 **FOR FUTURE HARM**

19 107. Defendant's wrongful conduct harms the public-at-large.

20 108. PFAS chemicals, also known as "forever chemicals," are a category of
21 highly persistent and toxic man-made chemicals that have been associated with
22 numerous negative health effects for humans.

23 109. PFAS chemicals are known to negatively impact the human body,
24 including, but not limited to, decreased fertility, developmental effects or delays in
25 children, increased risk of cancers, liver damage, increased risk of asthma and
26 thyroid disease, adverse impacts on the immune system, interference with hormones,
27 and increased cholesterol levels.

1 110. Because Defendant's deceptive advertising is ongoing and directed to
2 the public, and because Defendant continues to sell its Products containing PFAS
3 chemicals, the deception poses an ongoing risk to the public.

4 111. As such, a public injunction must be provided in order to enjoin
5 Defendant's continued harm of consumers and the public-at-large.

6 **TOLLING AND ESTOPPEL OF STATUTE OF LIMITATIONS**

7 112. Defendant had actual knowledge that its Products contained PFAS
8 chemicals that pose a risk of harm to human health.

9 113. Although Defendant was aware of the deception in its advertising,
10 marketing, packaging, and sale of the Products given the inclusion of PFAS
11 chemicals, they took no steps to disclose to Plaintiffs or Class Members that its
12 Products contained PFAS chemicals.

13 114. Despite its knowledge, Defendant has negligently misrepresented the
14 Products as having qualities and characteristics they do not, while concealing the
15 fact that its Products contain PFAS chemicals.

16 115. Defendant made, and continues to make, affirmative false statements
17 and misrepresentations to consumers, and continue to omit the fact that the Products
18 contain PFAS, to promote sales of its Products.

19 116. Defendant misrepresented, concealed, and otherwise omitted material
20 facts that would have been important to Plaintiffs and Class Members in deciding
21 whether to purchase the Products. Defendant's misrepresentations and omissions
22 were knowing, and they intended to, and did, deceive reasonable consumers,
23 including Plaintiffs and Class Members. Accordingly, Plaintiffs and Class Members
24 reasonably relied upon Defendant's misrepresentations and concealment of these
25 material facts and suffered injury as a proximate result of that justifiable reliance.

26 117. The PFAS chemicals in the design and/or manufacture of Defendant's
27 Products were not reasonably detectible to Plaintiffs and Class Members.

1 118. At all times, Defendant actively and intentionally misrepresented the
2 qualities and characteristics of the Products, while concealing the existence of the
3 PFAS chemicals and failing to inform Plaintiffs or Class Members of the existence
4 of the PFAS chemicals in its Products. Accordingly, Plaintiffs' and Class Members'
5 lack of awareness was not attributable to a lack of diligence on its part.

6 119. Defendant's statements, words, and acts were made for the purpose of
7 deceiving the public and suppressing the truth that the Products contained PFAS
8 chemicals.

9 120. Defendant misrepresented the Products and concealed the PFAS
10 chemicals for the purpose of delaying Plaintiffs and Class Members from filing a
11 complaint on their causes of action.

12 121. As a result of Defendant's intentional misrepresentations and active
13 concealment of the PFAS chemicals and/or failure to inform Plaintiffs and Class
14 Members of the PFAS chemicals, any and all applicable statutes of limitations
15 otherwise applicable to the allegations herein have been tolled. Furthermore,
16 Defendant is estopped from relying on any statutes of limitations in light of its
17 intentional misrepresentations and active concealment of the inclusion of PFAS
18 chemicals in the Products.

19 122. Further, the causes of action alleged herein did not occur until Plaintiffs
20 and Class Members discovered that the Products contained PFAS chemicals.
21 Plaintiffs and Class Members had no realistic ability to discern that the Products
22 contained PFAS chemicals until they learned of the existence of the PFAS
23 chemicals. In either event, Plaintiffs and Class Members were hampered in their
24 ability to discover their causes of action because of Defendant's active concealment
25 of the existence and true nature of the Products.

1 **FEDERAL RULE OF CIVIL POROCEDURE 9(B) ALLEGATIONS**

2 123. Although Defendant is in the best position to know what content it
3 placed on its packaging, website(s), and other marketing and advertising during the
4 relevant timeframe, and the knowledge they had regarding the PFAS chemicals and
5 its failure to disclose the existence of PFAS chemicals in the Products to Plaintiffs
6 and consumers, to the extent necessary, Plaintiffs satisfy the requirements of Rule
7 9(b) by alleging the following facts with particularity:

8 124. **WHO:** Defendant made its “[t]rusteD protection for your healing
9 wounds” and other representations on the Products’ packaging, online, and its
10 marketing and advertising of the Products.

11 125. **WHAT:** Defendant’s conduct here was, and continues to be, deceptive
12 and negligent because of its “#1 Doctor Recommended Brand,” “[t]rusteD protection
13 for healing your wounds” and heart/bandage logo representations and failure to
14 disclose the Products contain PFAS, which, together, imply the products are safe for
15 their intended use and do not contain harmful, toxic ingredients. Thus, Defendant’s
16 conduct deceived Plaintiffs and Class Members into believing that the Products were
17 manufactured and sold with the represented qualities. Defendant knew or should
18 have known this information is material to reasonable consumers, including
19 Plaintiffs and Class Members, in making their purchasing decisions, yet it continued
20 to pervasively market the Products as possessing qualities they do not have.

21 126. **WHEN:** Defendant made material misrepresentations, false statements,
22 and/or material omissions during the putative Class periods and at the time Plaintiffs
23 and Class Members purchased the Products, prior to and at the time Plaintiffs and
24 Class Members made claims after realizing the Products contained harmful
25 chemicals, and continuously throughout the applicable Class periods.

26 127. **WHERE:** Defendant’s marketing message was uniform and pervasive,
27 carried through false statements, misrepresentations, and/or omissions on the
28

1 Products' packaging, as well as on website(s) and social media channels used to
2 market and advertise the Products.

3 128. **HOW:** Defendant made false statements, misrepresentations and/or
4 material omissions regarding the presence of PFAS chemicals in the Products.

5 129. **WHY:** Defendant made the false statements, misrepresentations and/or
6 material omissions detailed herein for the express purpose of inducing Plaintiff,
7 Class Members, and all reasonable consumers to purchase and/or pay for the
8 Products over other brands that did not make similar representations, the effect of
9 which was that Defendant profited by selling the Products to many thousands of
10 consumers.

11 130. **INJURY:** Plaintiff and Class Members purchased, paid a premium, or
12 otherwise paid more for the Products when they otherwise would not have, absent
13 Defendant's misrepresentations and false and misleading statements.

14 **CLASS ACTION ALLEGATIONS**

15 131. Plaintiffs bring this action individually and as the representative of all
16 those similarly situated pursuant to Rule 23 of the Federal Rules of Civil Procedure,
17 on behalf of the below-defined Classes:

18 **National Class:** During the fullest period allowed by law, all
19 persons who purchased the Products within the United States for
20 personal use and not for resale.

21 **California Subclass:** During the fullest period allowed by law, all
22 persons who purchased the Products within the state of California
23 for personal use and not for resale.

24 132. Members of the classes described are referred to herein as "Class
25 Members" or members of the "Class."

1 133. Plaintiffs reserve the right to amend the Class definitions or add a Class
2 or Classes if discovery and/or further investigation reveal that the Class definition(s)
3 should be narrowed, expanded or otherwise modified.

4 134. The following are excluded from the Class: (1) any Judge presiding
5 over this action and members of his or her family; (2) Defendant, Defendant's
6 subsidiaries, parents, successors, predecessors, and any entity in which Defendant
7 or its parents have a controlling interest (as well as current or former employees,
8 officers, and directors); (3) persons who properly execute and file a timely request
9 for exclusion from the Class; (4) persons whose claims in this matter have been
10 finally adjudicated on the merits or otherwise released; (5) Plaintiffs' counsel and
11 Defendant's counsel; and (6) the legal representatives, successors, and assigns of
12 any such excluded persons.

13 135. **Numerosity – Federal Rule of Civil Procedure 23(a)(a):** While
14 Plaintiffs do not know at this time the exact number of proposed Class Members,
15 given the nature of the claims and the volume of sales of the Products nationally, the
16 members of the Class are so numerous that their individual joinder herein is
17 impracticable. Plaintiffs are informed and believe there are hundreds of thousands
18 of members in the proposed Class, if not more, and a precise number can be
19 ascertained through discovery. The number of individuals who comprise the Class
20 are so numerous that the disposition of all such person's claims in a class action,
21 rather than in individual actions, will benefit both the parties and the courts.

22 136. **Commonality and Predominance – Federal Rule of Civil Procedure**
23 **23(a)(2) and 23(b)(3):** Common questions of law and fact exist as to all members
24 of each of the Class and predominate over questions affecting only individual
25 members of the Class. Such common questions of law or fact include, but are not
26 limited to, the following:

27 a. Whether Defendant misrepresented, omitted, and/or failed
28

1 to disclose material facts concerning the Products;

2 b. Whether Defendant's conduct was unlawful; unfair;
3 negligent and/or deceptive;

4 c. Whether Defendant breached express warranties to
5 Plaintiffs and Class Members;

6 d. Whether Defendant was unjustly enriched as a result of the
7 unlawful conduct alleged herein such that it would be
8 inequitable for Defendant to retain the benefits conferred
9 upon it by Plaintiffs and the proposed Class;

10 e. Whether Plaintiffs and the Class have sustained damages
11 with respect to the claims asserted, and if so, the proper
12 measure of their damages.

13 137. Defendant engaged in a common course of conduct giving rise to the
14 legal rights Plaintiffs seek to enforce on behalf of themselves and the other Members
15 of the proposed Class. Similar or identical statutory and common law violations,
16 business practices, and injuries are involved. Individual questions, if any, pale in
17 comparison, in both quality and quantity, to the numerous common questions that
18 dominate this action.

19 138. **Typicality – Federal Rule of Civil Procedure 23(a)(3).** Plaintiffs'
20 claims are typical of the claims of the other Members of the Class because, among
21 other things, all Members of the Class were comparably injured through Defendant's
22 uniform misconduct described herein. Further, there are no defenses available to
23 Defendant that are unique to Plaintiffs or to any particular Members of the Class.

24 139. **Adequacy of Representation – Federal Rule of Civil Procedure**
25 **23(a)(4).** Plaintiffs are adequate Class representatives because their interests do not
26 conflict with the interests of the other Members of the Class they seek to represent;
27 they have retained counsel competent and experienced in complex class action
28

1 litigation; and they will prosecute this action vigorously. The interests of the Class
2 will be fairly and adequately protected by Plaintiffs and the undersigned counsel.

3 **140. Insufficiency of Separate Actions – Federal Rule of Civil Procedure**
4 **23(b)(1).** Absent a representative class action, Members of the Class would continue
5 to suffer the harm described herein, for which they would have no remedy. Even if
6 separate actions could be brought by individual consumers, the resulting multiplicity
7 of lawsuits would cause undue burden and expense for both the Court and the
8 litigants, as well as create a risk of inconsistent rulings and adjudications that might
9 be dispositive of the interests of similarly situated purchasers, substantially impeding
10 their ability to protect their interests, while establishing incompatible standards of
11 conduct for Defendant. The proposed Classes thus satisfy the requirements of Fed.
12 R. Civ. P. 23(b)(1).

13 **141. Superiority – Federal Rule of Civil Procedure 23(b)(3).** A class
14 action is superior to any other available means for the fair and efficient adjudication
15 of this controversy, and no unusual difficulties are likely to be encountered in the
16 management of this class action. The damages or other financial detriment suffered
17 by Plaintiffs and the other Members of the Class are relatively small compared to
18 the burden and expense that would be required to individually litigate their claims
19 against Defendant, so it would be impracticable for Members of the Class to
20 individually seek redress for Defendant's wrongful conduct. Even if Members of the
21 Class could afford individual litigation, the court system could not. Individualized
22 litigation would create a potential for inconsistent or contradictory judgments and
23 increase the delay and expense to all parties and the court system. By contrast, the
24 class action device presents far fewer management difficulties, and provides the
25 benefits of single adjudication, economy of scale, and comprehensive supervision
26 by a single court.

CAUSES OF ACTION

COUNT I

Violations of the California Unfair Competition Law (“UCL”), Cal. Bus. & Prof. Code §§ 17200, et seq. (On Behalf of Plaintiffs and the California Class)

142. Plaintiffs bring this count on behalf of themselves and the California Class and repeat and re-allege paragraphs 1 through 141 as if fully included herein.

143. Defendant is a “person” as defined by Cal. Bus. & Prof. Code § 17201.

144. Plaintiffs and California Class Members who purchased Defendant’s Product suffered an injury by virtue of buying products in which Defendant omitted the Product’s true quality, reliability, safety, and use. Had Plaintiffs and California Class Members known that Defendant omitted material information regarding the Product, they would not have purchased the Product.

145. Defendant’s conduct, as alleged herein, violates the laws and public policies of California and the federal government, as set out in this Complaint.

146. There is no benefit to consumers or competition by allowing Defendant to deceptively label, market, and advertise its Product.

147. Plaintiffs and California Class Members who purchased Defendant’s Product had no way of reasonably knowing that the Product was deceptively packaged, marketed, advertised, and labeled, was not safe for human consumption, and was unsuitable for its intended use as a protective bandage for healing wounds. Thus, Plaintiffs and California Class Members could not have reasonably avoided the harm they suffered.

148. Specifically, Defendant marketed, labeled, and represented the Product with the representations described herein, when in fact the Product contains PFAS, which no reasonable consumer would believe was in Product, which was represented as trusted, safe, and recommended by doctors.

149. The gravity of the harm suffered by Plaintiffs and California Class Members who purchased Defendant’s Product outweighs any legitimate

1 justification, motive, or reason for packaging, marketing, advertising, and labeling
2 the Product in a deceptive and misleading manner. Accordingly, Defendant's actions
3 are immoral, unethical, unscrupulous and offend the established public policies as
4 set out in federal regulations and are substantially injurious to Plaintiffs and
5 California Class Members.

6 150. The above acts of Defendant in disseminating said misleading and
7 deceptive statements to consumers throughout the state of California, including to
8 Plaintiffs and California Class Members, were and are likely to deceive reasonable
9 consumers by obfuscating the true nature of Defendant's Product and, thus, were
10 violations of Cal. Bus. & Prof. Code §§ 17500, et seq.

11 151. Defendant has violated the UCL's proscription against engaging in
12 unlawful business practices as a result of its violations of the CLRA, Cal. Civ. Code
13 § 1770(a)(5), (a)(7), and (a)(9) as alleged below, violations of California's Song-
14 Beverly Act and violations of California's False Advertising Law, in addition to
15 breaches of warranty and violations of common law.

16 152. Defendant has also violated the UCL's proscription against engaging in
17 unfair business practices. Defendant's acts, omissions, and non-disclosures as
18 alleged herein also constitute "unfair" business acts and practices within the meaning
19 of Business & Professions Code § 17200 et seq. in that its conduct is substantially
20 injurious to consumers, offends public policy, and is immoral, unethical, oppressive,
21 and unscrupulous, as the gravity of the conduct outweighs any alleged benefits
22 attributable to such conduct.

23 153. Defendant has further violated the UCL's proscription against engaging
24 in fraudulent business practices. Defendant's claims, nondisclosures, and misleading
25 statements with respect to the Product, as more fully set forth above, were false,
26 misleading and/or likely to deceive the consuming public within the meaning of
27 Business & Professions Code § 17200.

155. As a result of Defendant's above unlawful, unfair, and fraudulent acts and practices, Plaintiffs, on behalf of themselves and all others similarly situated, and as appropriate, on behalf of the general public, seek injunctive relief prohibiting Defendant from continuing these wrongful practices.

COUNT II
Violation of the California False Advertising Law (“FAL”),
California Business and Professions Code §§ 17500, et seq.
(On Behalf of Plaintiffs and the California Class)

158. The conduct described herein took place within the state of California and constitutes deceptive or false advertising in violation of California Business and Professions Code § 17500.

1 exercise of reasonable care should be known, to be untrue or misleading.” Cal. Bus.
2 & Prof. Code § 17500.

3 160. Defendant violated the FAL by failing to disclose the Product contained
4 harmful PFAS, which is a material fact to reasonable consumers.

5 161. At the time of its misrepresentations, Defendant was either aware the
6 Product contained PFAS, which no reasonable consumer would expect would be in
7 the Product, given it is not included anywhere in the Product’s label, or was aware
8 that it lacked the information and/or knowledge required to make such a
9 representation truthfully. Defendant concealed, omitted, and failed to disclose this
10 information to Plaintiffs and California Class Members.

11 162. Defendant’s descriptions of the Product were false, misleading, a
12 material omission, and likely to deceive Plaintiffs and other reasonable consumers.

13 163. Defendant’s conduct therefore constitutes deceptive or misleading
14 advertising.

15 164. Plaintiffs have standing to pursue claims under the FAL, as they
16 reviewed and relied on Defendant’s packaging, advertising, representations, and
17 marketing materials regarding the Product when selecting and purchasing the
18 Product.

19 165. In reliance on the statements made in Defendant’s advertising and
20 marketing materials and Defendant’s omissions and concealment of material facts
21 regarding the quality and use of the Product, Plaintiffs and California Class Members
22 purchased the Product.

23 166. Had Defendant disclosed the true nature of the Product (that it contains
24 or risks containing PFAS), Plaintiffs and California Class Members would not have
25 purchased the Product or would have paid substantially less for it.

26 167. As a direct and proximate result of Defendant’s actions, as set forth
27 herein, Defendant has received ill-gotten gains and/or profits, including but not
28

1 limited to money from Plaintiffs and California Class Members who paid for the
2 Product, which contained harmful chemicals and was therefore safe.

3 168. As a result of Defendant's above unlawful, unfair, and fraudulent acts
4 and practices, Plaintiffs, on behalf of themselves and all others similarly situated,
5 and as appropriate, on behalf of the general public, seek injunctive relief prohibiting
6 Defendant from continuing these wrongful practices.

7 169. Additionally, Plaintiffs seek restitution if monetary damages are not
8 available. Indeed, restitution under the FAL can be awarded in situations where the
9 entitlement to damages may prove difficult. But even if damages were available,
10 such relief would not be adequate to address the injury suffered by Plaintiffs and
11 other Class Members. Unlike damages, the Court's discretion in fashioning equitable
12 relief is very broad. Thus, restitution would allow recovery even when normal
13 consideration associated with damages would not.

14 **COUNT III**

15 **Breach of Implied Warranty Under the Song-Beverly Act, 16 Cal. Civ. Code § 1790, et seq. and California Commercial Code § 2314 (On Behalf of Plaintiffs and the California Class)**

17 170. Plaintiffs bring this count on behalf of themselves and the California
18 Class and repeat and re-allege paragraphs 1 through 141 as if fully included herein.

19 171. Under the Song-Beverly Consumer Warranty Act, Cal. Civ. Code §
20 1790, et seq., and California Commercial Code § 2314, every sale of consumer
21 goods in the state of California is accompanied by both a manufacturer's and retail
22 seller's implied warranty that the goods are merchantable, as defined in that Act. In
23 addition, every sale of consumer goods in California is accompanied by both a
24 manufacturer's and retail seller's implied warranty of fitness when the manufacturer
25 or retailer has reason to know that the goods as represented have a particular purpose
26 and that the buyer is relying on the manufacturer's or retailer's skill or judgment to
27 furnish suitable goods consistent with that represented purpose.

172. The Product at issue here is a “consumer good[.]” within the meaning of Cal. Civ. Code § 1791(a).

173. Plaintiffs and California Class Members who purchased the Product are “retail buyers” within the meaning of Cal. Civ. Code § 1791.

174. Defendant is in the business of manufacturing and/or producing the Product and therefore is a “manufacturer” and “seller” within the meaning of Cal. Civ. Code § 1791.

175. Defendant impliedly warranted to retail buyers that the Product was merchantable in that it would: (a) pass without objection in the trade or industry under the contract description, and (b) was fit for the ordinary purposes for which the Product is used. For a consumer good to be “merchantable” under the Song-Beverly Act, it must satisfy both of these elements. Defendant breached these implied warranties because the Product was unsafe for consumption due to its inclusion of PFAS. Therefore, the Product would not pass without objection in the trade or industry and were not fit for the ordinary purpose for which they are used.

176. Plaintiffs and California Class Members purchased the Product in reliance upon Defendant's skill and judgment in properly packaging and labeling the Product.

177. The Product was not altered by Plaintiffs or California Class Members.

178. The Product was defective at the time of sale. The issue as described in this Complaint was latent in the Product and not discoverable at the time of sale.

179. Defendant knew the Product would be purchased and used without additional testing by Plaintiffs and California Class Members.

180. As a direct and proximate cause of Defendant's breach of the implied warranty, Plaintiffs and California Class Members have been injured and harmed because they would not have purchased the Product if they knew the truth about the Product, namely, that it was unfit for use and posed a significant safety risk.

1 181. Plaintiffs and the California Class seek compensatory damages,
2 attorney's fees, costs, and any other just and proper relief available under law.

3 **COUNT IV**
4 **Breach of Express Warranty**
5 **(On Behalf of Plaintiffs and the National Class)**

6 182. Plaintiffs bring this count on behalf of themselves and the National
7 Class and repeat and re-allege paragraphs 1 through 141 as if fully included herein.

8 183. Plaintiffs and Class Members formed a contract with Defendant at the
9 time Plaintiffs and Class Members purchased the Products.

10 184. The terms of the contract include the promises and affirmations of fact
11 made by Defendant on the Products packaging and through marketing and
12 advertising, as described above.

13 185. This labeling, marketing, and advertising constitute express warranties
14 and became part of the basis of the bargain and are part of the standardized contract
15 between Plaintiffs and Class Members.

16 186. As set forth above, Defendant purported through its advertising,
17 labeling, marketing, and packaging, to create an express warranty that the Products
18 are safe for use and provided "[t]rusted protection for [consumers'] healing
19 wounds."

20 187. The above affirmations of fact were not couched as "belief" or
21 "opinion," and were not "generalized statements of quality not capable of proof or
22 disproof."

23 188. These affirmations of fact became part of the basis for the bargain and
24 were material to Plaintiffs' and Class Members' decision to purchase the Products.

25 189. Plaintiffs and Class Members reasonably relied upon Defendant's
26 affirmations of fact and justifiably acted in ignorance of the material facts omitted
27 or concealed when they decided to buy Defendant's Products.

190. Plaintiffs and Class Members performed all conditions precedent to Defendant's liability under this contract when they purchased the Products.

191. Defendant thereby breached the following state warranty laws:

- a. Code of Ala. § 7-2-313;
- b. Alaska Stat. § 45.02.313;
- c. A.R.S. § 47-2313;
- d. A.C.A. § 4-2-313;
- e. Cal. Comm. Code § 2313;
- f. Colo. Rev. Stat. § 4-2-313;
- g. Conn. Gen. Stat. § 42a-2-313;
- h. 6 Del. C. § 2-313;
- i. D.C. Code § 28:2-313;
- j. Fla. Stat. § 672.313;
- k. O.C.G.A. § 11-2-313;
- l. H.R.S. § 490:2-313;
- m. Idaho Code § 28-2-313;
- n. 810 I.L.C.S. 5/2-313;
- o. Ind. Code § 26-1-2-313;
- p. Iowa Code § 554.2313;
- q. K.S.A. § 84-2-313;
- r. K.R.S. § 355.2-313;
- s. 11 M.R.S. § 2-313;
- t. Md. Commercial Law Code Ann. § 2-313;
- u. 106 Mass. Gen. Laws Ann. § 2-313;
- v. M.C.L.S. § 440.2313;
- w. Minn. Stat. § 336.2-313;
- x. Miss. Code Ann. § 75-2-313;

1 y. R.S. Mo. § 400.2-313;
2 z. Mont. Code Anno. § 30-2-313;
3 aa. Neb. Rev. Stat. § 2-313;
4 bb. Nev. Rev. Stat. Ann. § 104.2313;
5 cc. R.S.A. 382-A:2-313;
6 dd. N.J. Stat. Ann. § 12A:2-313;
7 ee. N.M. Stat. Ann. § 55-2-313;
8 ff. N.Y. U.C.C. Law § 2-313;
9 gg. N.C. Gen. Stat. § 25-2-313;
10 hh. N.D. Cent. Code § 41-02-30;
11 ii. II. O.R.C. Ann. § 1302.26;
12 jj. 12A Okl. St. § 2-313;
13 kk. Or. Rev. Stat. § 72-3130;
14 ll. 13 Pa. Rev. Stat. § 72-3130;
15 mm. R.I. Gen. Laws § 6A-2-313;
16 nn. S.C. Code Ann. § 36-2-313;
17 oo. S.D. Codified Laws, § 57A-2-313;
18 pp. Tenn. Code Ann. § 47-2-313;
19 qq. Tex. Bus. & Com. Code § 2.313;
20 rr. Utah Code Ann. § 70A-2-313;
21 ss. 9A V.S.A. § 2-313;
22 tt. Va. Code Ann. § 59.1-504.2;
23 uu. Wash. Rev. Code Ann. § 6A.2-313;
24 vv. W. Va. Code § 46-2-313;
25 ww. Wis. Stat. § 402.313; and
26 xx. Wyo. Stat. § 34.1-2-313.

193. Within a reasonable time after it knew or should have known, Defendant did not change the Products' label to stop the deceptive acts and practices by falsely warranting that its Products were safe for use and provided "[t]rust protection for [consumers'] healing wounds," and by falsely omitting that its Products contained material levels of PFAS.

194. On September 24, 2024, Plaintiffs sent a letter to Defendant, notifying it about its breach of express warranties in compliance with Cal. Com. Code § 2607(3)(a).

COUNT V
Negligent Misrepresentation
(On Behalf of Plaintiffs and the National Class)

194. Plaintiffs bring this count on behalf of themselves and the National Class and repeat and re-allege paragraphs 1 through 141 as if fully included herein.

195. As alleged above, Defendant misrepresented the safety of its Products and omitted that the Products contained PFAS. These misrepresentations and omissions constituted a material fact (i.e., a consumer's decision to purchase the Products would be influenced by its safety and the presence of PFAS).

196. Defendant's misrepresentations and omissions were made in the course of business transactions (the marketing, advertisement, sale, and purchase of the Products) in which both Plaintiffs and Defendant have a pecuniary interest.

197. Defendant knew (or should have known) that these representations and omissions were false and/or misleading and failed to exercise reasonable care in dissemination of the information contained on its labels and in its marketing and advertising.

198. Defendant possesses superior knowledge regarding the risks involved in the production and manufacturing of its Products. Such knowledge is not readily available to consumers like Plaintiffs and Class Members.

200. Consumers lack the meaningful ability to test or independently ascertain or verify whether a product contains unsafe substances, such as PFAS, especially at the point of sale, and therefore must and do rely on Defendant to truthfully and honestly report what the Products contain on the Products' packaging and/or labeling.

201. Defendant intended that its representations and omissions would induce consumers like Plaintiffs and Class Members into purchasing the Products.

202. Because of Defendant's misrepresentations, Plaintiffs are now at a heightened risk of having elevated levels of PFAS in their bodies and bloodstreams.

203. Plaintiffs' injuries were proximately caused by Defendant's misrepresentations and omissions. Plaintiffs viewed Defendant's labels prior to purchasing the Products, and the representations that the Products were safe prompted them to purchase the Products. Had Plaintiffs been aware of Defendant's misrepresentations and omissions, they would have been unwilling to purchase the Products, or to purchase them at the price that they paid.

COUNT VI
Unjust Enrichment
(In the Alternative, On Behalf of Plaintiffs and the National Class)

204. Plaintiffs bring this count on behalf of themselves and the National Class and repeat and re-allege paragraphs 1 through 141 as if fully included herein.

205. At all relevant times, Defendant was responsible for designing, constructing, testing, manufacturing, inspecting, distributing, labeling, marketing, advertising, and/or selling the Products and its packaging. At all relevant times, it was reasonably foreseeable by Defendant that the use of the Products in their

1 intended manner involved substantial risk of injury and was unreasonably dangerous
2 to Plaintiffs and the Class as the ultimate users of the Products.

3 206. At all relevant times, Defendant knew or had reason to know of the risk
4 of injury and the resultant harm that the Products posed to Plaintiffs and Class
5 Members, as the existence of PFAS in the Products existed at the time of their design,
6 construction, manufacture, inspection, distribution, labeling, marketing, advertising,
7 and/or sale, as described herein.

8 207. Defendant, as the designer, manufacturer, tester, distributor, marketer,
9 advertiser, and/or seller of the Products, had a duty to warn Plaintiffs and the Class
10 of all dangers associated with use of the Products.

11 208. At minimum, the duty arose for Defendant to warn consumers that use
12 of the Products could result in injury and was unreasonably dangerous.

13 209. Defendant has been unjustly enriched in retaining the revenues derived
14 from the purchases of the Products by Plaintiffs and the other members of the Class.
15 Retention of those monies under these circumstances is unjust and inequitable
16 because Defendant's representations regarding the quality or value of the Products
17 were misleading to consumers, which caused injuries to Plaintiffs and the other
18 members of the Class, because they would have not purchased the Products had they
19 known the truth or would only have purchased the Products for a lower price.

20 210. Because Defendant's retention of the non-gratuitous benefits conferred
21 on it by Plaintiffs and the other members of the Class is unjust and inequitable,
22 Defendant must pay restitution to Plaintiffs and the other members of the Class for
23 their unjust enrichment, as ordered by the Court.

PRAYER FOR RELIEF

WHEREFORE, Plaintiffs, individually and on behalf of all other similarly situated members of the Class, pray for relief and judgment, including entry of an order, as follows:

- (a) Declaring that this action is properly maintained as a class action, certifying the proposed Class, appointing Plaintiffs as Class Representative, and appointing Plaintiffs' counsel as Class Counsel;
- (b) Directing that Defendant bear the costs of any notice sent to the Class;
- (c) Ordering Defendant to pay restitution to Plaintiffs and the Class;
- (d) An Order requiring Defendant to establish a blood testing program for Plaintiffs and the Class, as well as to establish a medical monitoring protocol for Plaintiffs and the Class to monitor individuals' health and diagnose at an early stage any ailments associated with exposure to PFAS;
- (e) A jury trial and damages according to proof;
- (f) Awarding actual damages to Plaintiffs and the Class;
- (g) Awarding Plaintiffs and Members of the Class statutory damages, as provided by the applicable state consumer protection statutes invoked above;
- (h) Awarding attorneys' fees and litigation costs to Plaintiffs and Members of the Class;
- (i) Civil penalties, prejudgment interest and punitive damages as permitted by law; and
- (j) Ordering such other and further relief as the Court deems just and proper.

JURY TRIAL DEMAND

Plaintiffs hereby demand a jury trial of the claims asserted in this Class

1 Action Complaint.

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3 Dated: September 25, 2024.

Respectfully submitted,

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**Pro Hac Vice* application forthcoming